HIGH COURT OF GUJARAT

NARANBHAI SHAMALBHAI PATEL
Versus
VICE CHANCELLOR

Date of Decision: 28 January 2008

Citation: 2008 LawSuit(Guj) 268

Hon'ble Judges: Jayant Patel

Eq. Citations: 2008 5 GLR 3855, 2008 2 GCD 807

Case Type: Special Civil Application

Case No: 18526 of 2007

Subject: Constitution

Acts Referred:
Constitution of India Art 14

Final Decision: Petition allowed

Advocates: R C Jani, Premal R Joshi

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[1] Rule. Mr. Joshi learned Counsel for the respondent waives service of notice of rule for the respondent. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

[2] The petitioner has preferred the petition for appropriate direction to quash and set aside the decision dated 12.7.2007, passed by respondent No. 3, and to direct respondents to permit the petitioner to run P.G. course (LL.M) from the academic year 2007-2008.

[3] Heard Mr. Jani learned Counsel appearing for the petitioner and Mr. Joshi learned Counsel for the respondent.

[4] The short facts of the case appear to be that the petitioner was earlier running the P.G. course (LL.M), and such course continued from 1995 to 2006. It appears that in the year 2007 the petitioner was intimated vide letter dated 31st May 2007, for continuing with the course of the P.G. course (LL.M) that there is one additional

requirement of Lecturer and Assistant Lecturer and therefore, it was intimated to the petitioner that the proposal be submitted, and the matter shall be considered thereafter. As per the petitioner, thereafter the procedure was completed and vide letter dated 15.6.2007, the names of the lecturers were communicated and the approval was prayed. It appears that thereafter, vide communication dated 4.7.2007, the petitioner further entered into correspondence with the University, submitting that the proposal has already forwarded and the compliance is made, and there is only one college at Modasa for P.G. Center since 1995 to 2006, and the distance between Modasa and Patan is about 150 kms., therefore, keeping in view the facts and circumstances, the permission be granted. It appears that thereafter, vide letter dated 12.7.2007, the petitioner has intimated that in view of the opinion of the dean, the request for continuing P.G. course (LL.M) from July 2007, cannot be continued and cannot be accepted and no student be admitted by the petitioner. It is under these circumstances, the present petition before this Court.

[5] Heard Mr. Jani learned Counsel for the petitioner and Mr. Joshi learned Counsel for the respondent.

[6] It is true that in the field of academics, normally the Court would not exercise appellate power, and over the decision taken by the University and whether to permit post graduate center or not be left to the expert body of the University or its decision. However, if the University has taken any decision either contrary to the statute or ex-facie arbitrary, such may be interfered by this Court, since the decision may be rendered in violation of Article 14 of the Constitution.

[7] If the aforesaid test for judicial scrutiny is taken into consideration, keeping in view the facts of the present case, it appears that the University has taken decision based on the opinion of dean of law faculty. The opinion of dean of law faculty is produced with the affidavit in reply filed by the I/c Registrar of the University. The perusal of the said opinion of the dean shows that the following aspects are mentioned in the opinion of dean.

[8] All P.G. Centers earlier affiliated to the University are discontinued.

[9] The New academic course has come, and as there was no proper facilities in the P.G. Center at the relevant point of time, the University from the year 2003 onwards had decided to run P.G. Center at the University itself.

[10] Inspite of the continuation of the P.G. Center by the University from the year 2003 onwards, the P.G. Center of the petitioner college was continued by the University.

[11] The University is running P.G. Center on self finance basis, and the students are paying fees of Rs. 13,600/- per semester, whereas in the P.G. Center at Modasa, the students are paying fees of Rs. 900/- per semester.

[12] Since, the University is charging Rs. 13,600/- per semester as against the same Modasa P.G. Center charged Rs. 900 per semester, the students have opposed for the fees and the representation is also submitted for such anomaly in the fees.

[13] As the University has closed all the P.G. Centers, it would not be proper to continue with the P.G. Center at Modasa.

[14] Number of students who are admitted may be less and if the center is to run at the different places, it will not be in the proper interest of the administration, since the educational activities like Electronic Instruments, advance library, experts member of the faculties etc., are required and therefore, the decision is better that the P.G. Center runs at the University level only.

[15] In view of the aforesaid consideration the request for continuing with the approval for P.G. Center at the petitioner college at Modasa is denied.

[16] There is no material placed on record by the University to show that there is no proper faculty member with the petitioner or there is no requisite library with the petitioner for continuing with, or any other basic infrastructure for continuing with the P.G. Center. It is an admitted position that the P.G. Center continued by the petitioner for about more than ten years. It appears from the report of the dean that mainly two grounds are made as basis for not granting approval. One is the anomaly in the fees between the fees being paid by the student at University, and the student paying fees at petitioner's college, and the second ground is that the University has decided to close all the P.G. Centers other than University.

[17] The second ground for closure of all P.G. Centers at the place other than the University was already there, when the petitioner's college continued with the P.G. Center after 2004-2005 and 2006-2007, and therefore, if the University at the relevant point of time, inspite of its policy decision to discontinue with all P.G. Centers, permitted the petitioner to continue with the P.G. Center from 2004-2005, such cannot be said as valid consideration at the later stage for not to continue the approval to the P.G. Center. The aforesaid shows that there is ex-facie non-application of mind on the part of the University.

[18] If the first ground is considered, the distinguishing feature is that the University is running P.G. Center by way of self finance, whereas such is not the situation in the P.G. Center of the petitioner. If the students are to get the education at the fees of Rs.

900/- per semester, as against the fees to be paid to the University for Rs. 13,600/- per semester without compromising with the minimum requirement of running the P.G. Center in the respect of faculty members or other basic infrastructure, it would be ex-facie absurd on the part of the University to create situation compelling the students to pay higher fees for P.G. Center, only with a view to maintain its own self finance P.G. Center. The attempt on the part of the University should be to see that as far as possible at the moderate rate the education is made available to the students. If without compromising with the quality of the education, and by maintaining the minimum requirement as per the UGC guideline, the P.G. Center can be maintained, it would not be proper on the part of the University to close the same, merely because it is not to get the requisite numbers of students to pay higher amount of fees. In the same manner charging of higher fees by the University at the self finance center, in comparison to the charging of lower fees by the college without compromising with the quality of the education, cannot also be said to be a valid ground on the part of the University for advancing the cause of the education for which it is meant. If the college without compromising with the quality of the education is in position to impart education at the lower rate of fees, such on the contrary should be encouraged by University. No attempt on the part of the University to commercialise the education just to get the higher amount of the fees at the self finance centers run by it, can be countenanced and such can be said as ex-facie absurd approach on the part of the University. Therefore, the first ground for difference of fees being charged by the University at the P.G. Center for denying the approval of the P.G. Center, to the petitioner cannot be maintained at all and it would lead to no encouragement by the University to the education at the lower rate of fees, but would result into permitting the commercial approach by the University in the field of education. Therefore, it can be said that such ground is ex-facie arbitrary and would be violative of Article 14 of the Constitution.

[19] In the result, not to grant approval to the petitioner to continue with P.G. Center cannot be sustained and hence, is quashed and set aside with the direction to the University to reconsider the matter in light of the observations made by this Court hereinabove and to render the decision within a period of two months from the receipt of the order of this Court.

[20] The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs. Direct service is permitted.